



March 18, 2019

**BY EMAIL AND BY FIRST CLASS MAIL**

Freedom of Information Officer  
U.S. Environmental Protection Agency – Region 2  
290 Broadway, 26th Floor  
New York, NY 10007-1866  
[r2foia@epa.gov](mailto:r2foia@epa.gov)

**Re: Freedom of Information Act Request: AES Puerto Rico Cogeneration Plant (EPA Plant ID 110010364006) Environmental Permitting and Compliance**

Dear Freedom of Information Officer(s):

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Environmental Protection Agency’s (“EPA”) FOIA regulations, 40 C.F.R. § 2.100, *et seq.*, Earthjustice, on behalf of Comité Diálogo Ambiental, Inc., respectfully requests records relating to the AES Puerto Rico Cogeneration Plant, EPA Plant ID 110010364006 (“Guayama Plant”), operated by AES Puerto Rico, LP (“AES-PR”). Specifically, we seek:

- (1) All documents relating to the Guayama Plant’s air quality permits, including but not limited to:
  - a. The Guayama Plant’s current Clean Air Act (“CAA”) Title V permit;
  - b. The Guayama Plant’s previous CAA Title V permits;
  - c. Applications submitted by AES-PR to EPA for CAA Title V permits;
  - d. Any correspondence between AES-PR and EPA regarding these applications and permits; and
  - e. Any other documents relating to the Guayama Plant’s air quality permits.
- (2) All documents since January 1, 2014 relating to the Guayama Plant’s compliance or noncompliance with its air quality permits and other provisions of the CAA, including:



- a. All air quality related data reportable to the Integrated Compliance Information System ("ICIS") since July 30, 2014;<sup>1</sup>
  - b. Any and all violations or exceedances of permit standards or limitations which occurred since January 1, 2014, whether due to regular reporting required by environmental statutes or regulations, EPA or Territory inspections, monitoring data, self-reporting by AES-PR and/or the Guayama Plant, or from any other source; and
  - c. Any and all warning letters, Notice of Violations, or orders directing AES-PR and/or the Guayama Plant to take action to come into compliance, issued by the EPA since January 1, 2014.
- (3) All documents relating to enforcement actions taken by EPA as a result of the Guayama Plant's noncompliance with the CAA, since January 1, 2014.
- (4) All documents relating to the Guayama Plant's water permits including but not limited to:
- a. The Guayama Plant's current National Pollutant Discharge Elimination System ("NPDES") permit;
  - b. The Guayama Plant's previous NPDES permits;
  - c. Applications submitted by AES-PR to EPA for NPDES permits;
  - d. Any correspondence between AES-PR and EPA regarding these applications and permits; and
  - e. Any other documents relating to the Guayama Plant's water permits.
- (5) All documents since January 1, 2014 relating to the Guayama Plant's compliance or noncompliance with its water permits and other provisions of the Clean Water Act ("CWA"), including:

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<sup>1</sup> ICIS reporting for the Guayama Plant has not been updated since 2014. EPA, ICIS Plant Information: AES Puerto Rico Cogeneration Plant (July 30, 2014), [https://ofmpub.epa.gov/enviro/afs\\_reports.detail\\_plt\\_view?p\\_state\\_county\\_compliance\\_src=7205700056](https://ofmpub.epa.gov/enviro/afs_reports.detail_plt_view?p_state_county_compliance_src=7205700056).



- a. All water quality related data reportable to the Integrated Compliance Information System (“ICIS”) since July 30, 2014;
  - b. Any and all violations or exceedances of permit standards or limitations which occurred since January 1, 2014, whether due to regular reporting required by environmental statutes or regulations, EPA or Territory inspections, monitoring data, self-reporting by AES-PR and/or the Guayama Plant, or from any other source; and
  - c. Any and all warning letters, Notice of Violations, or orders directing AES-PR and/or the Guayama Plant to take action to come into compliance, issued by EPA since January 1, 2014.
- (6) All documents relating to enforcement actions taken by EPA as a result of the Guayama Plant’s noncompliance with the CWA since January 1, 2014.
- (7) All documents since January 1, 2014 relating to storage, disposal, transportation or use of coal combustion residuals (“CCR”) or “Agremax” generated or produced by the AES Guayama Plant, including but not limited to:
- a. All waste characterization information, including leaching data and leach tests, concerning CCR and Agremax submitted by AES-PR or its agents to EPA since January 1, 2014;
  - b. All groundwater monitoring data submitted by AES-PR or its agents to EPA;
  - c. All information concerning off-site use of CCR and Agremax in the United States since January 1, 2014;
  - d. All information concerning shipment of CCR and Agremax to the continental United States since January 1, 2014;
  - e. Any and all warning letters, Notices of Violation, or orders directing AES-PR and/or the Guayama Plant to take action to come into compliance with RCRA requirements, as contained in the CCR rule, issued by the EPA since January 1, 2014;
  - f. Any and all warning letters, Notice of Violations, or orders directing AES-PR and/or the Guayama Plant to take action to come into compliance with RCRA requirements pertaining to the generation, storage, transport or disposal of hazardous waste, issued by the EPA since January 1, 2014; and



- g. Any and all documents relating to the waste piles maintained by AES-PR at the Guayama plant.

(8) To the extent not provided in response to the requests above, any inspection reports for the Guayama Plant by EPA or Territory authorities since January 1, 2014.

For the purposes of this request, the term “records” includes all written, printed, recorded, or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of EPA. Please provide any electronic records in native file format. Please also include all responsive records generated up to the date this request is filled.

The disclosure of the requested materials is in the public interest because: (1) it is likely to contribute significantly to public understanding regarding environmental quality due to historic and ongoing emissions and discharges of the Guayama Plant, as well as the opportunities and threats operations of the Guayama Plant pose to the public, all of which relate to the EPA’s mission of protecting human health and the environment; (2) disclosure is not in the commercial interest of Earthjustice and Comité Diálogo Ambiental, Inc., which as non-profit environmental organizations, do not provide nor have any pecuniary interest in the field of energy production; and (3) disclosure is not counter to the commercial interest of any business entity which could otherwise claim any confidentiality exception.

Earthjustice is a 501(c)(3) non-profit organization, organized under a charter whose purposes are exclusively charitable and oriented to environmental conservation. Earthjustice has no commercial interest in the requested information, but instead is working to support Comité Diálogo Ambiental, Inc. to understand threats to environmental and public health. These threats include the combustion of fossil fuel to generate electricity, as demonstrated by AES-PR’s Guayama Plant. Earthjustice and Comité Diálogo Ambiental, Inc. intend to disseminate the information gathered through this request to the general public through the Earthjustice website, [www.earthjustice.org](http://www.earthjustice.org), which is updated regularly, and through press releases, social media, and public comment letters.

With respect to any claims of confidentiality, Executive Order 12600 indicates that “confidential commercial information” excluded under FOIA Exemption 4 is *not* to be construed expansively, but instead applies only documents for which “disclosure could reasonably be expected to cause substantial competitive harm.” Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, 52 Fed. Reg. 23,781 (1987). *See* Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (1987). In this case, the



requested information does not create any risk of “substantial competitive harm” to AES-PR, and consequently, the EPA should release all requested records.

If EPA regards any documents as exempt from required disclosure under the Freedom of Information Act, please identify each allegedly exempt record in writing, provide a brief description of that record, and explain the agency’s justification for withholding it. This explanation should take the form of a Vaughn index, as described in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), and other related cases. If a document contains both exempt and non-exempt information, please provide those portions of the document that are not exempted from disclosure.

Finally, as a 501(c)(3) non-profit organization serving the public, we request that you waive any search and duplication fees and provide the requested records without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107. A fee waiver is appropriate because, as previously stated, Earthjustice and Comité Diálogo Ambiental, Inc. do not have a commercial interest that would be furthered by the requested disclosure. Our intended use of the requested materials is simply to foster a greater understanding of the environmental impacts of the AES-PR Guayama Plant, and to continue to disseminate information about relevant environmental policy to the public through the channels described above. All of the educational and advocacy activities described above have been, and will continue to be, provided to the public by Earthjustice without motive nor opportunity for profit. Courts have recognized that Congress intended FOIA’s fee waiver to be “liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987).

Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we request that you contact us before processing this request to discuss fees. We reserve our right to appeal a denial of our request for a fee waiver or reduction.

FOIA directs a responding agency to make a “determination” on any request within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A). Should our request be denied in whole or in part, we ask that you inform us of the grounds for denial and the specific administrative appeal rights that are available.



Thank you in advance for your cooperation. Please contact me at (215) 717-4521 or [cmcphe dran@earthjustice.org](mailto:cmcphe dran@earthjustice.org) with any questions, and to arrange for inspection, copying, and/or electronic transmission of the requested documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles McPhedran".

Charles McPhedran, Esq.

Copy: Carmen Guerrero, Director  
Caribbean Environmental Protection Division  
EPA Region 2